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UNITED STATES BANKRUPTCY COURT

for the

NORTHERN DISTRICT OF CALIFORNIA

Practices and Procedures

Hon. M. Elaine Hammond

(July 2015)

In addition to complying with the United States Bankruptcy Code ("Code"), Bankruptcy Local Rules for the United States Bankruptcy Court for the Northern District of California ("B.L.R."), the Civil Local Rules of the United States District Court for the Northern District of California ("Civil L.R.") and the Federal Rules of Bankruptcy Procedure ("Rules"), Judge Hammond expects counsel and litigants appearing before her to be aware of and abide by the following practices and procedures. Any failure to comply with all applicable provisions of the Code, Rules, B.L.R. and Civil L.R. may be deemed sufficient grounds for the imposition of monetary or other sanctions.

A. Telephonic Appearances

Please refer to Judge Hammond's Telephonic Appearance Policy and Procedures, which can be viewed at:

<http://www.canb.uscourts.gov/procedure/hammond/judge-hammonds-policy-and-procedures->

[appearances-telephone](#)

B. Communications with Chambers' Staff

Rule 9003 prohibits *ex parte* communications with the Court concerning matters affecting a particular case or proceeding. Rule 5-300(C) of the California Rules of Professional Conduct specifies that, for disciplinary purposes, contact with a judge's law clerks constitutes contact with the judge. No attorney or litigant may engage in contact with Judge Hammond or her law clerks in violation of these rules.

Should an attorney or litigant have questions concerning the status of an order or to provide courtesy notice to chambers, he or she should contact Judge Hammond's Judicial Assistant, Raenna Rorabeck, at (408) 278-7538 or raenna_rorabeck@canb.uscourts.gov. If the question relates to obtaining a calendar date or requesting an expedited hearing, please contact Judge Hammond's Courtroom Deputy, Millie McGowan, at (408) 278-7578 or millie_mcgowan@canb.uscourts.gov.

C. Calendaring Matters

Please refer to Judge Hammond's Open Calendar Procedure and Judge Hammond's Open Calendar Dates, which can be viewed at:

<http://www.canb.uscourts.gov/procedure/hammond/judge-hammonds-open-calendar-procedure>

D. Chambers Copies

Please refer to Judge Hammond's Policy for Chambers' Copies, which can be viewed at:

<http://www.canb.uscourts.gov/procedure/hammond/judge-hammonds-policy-chambers-copies>

E. Submission of Proposed Orders

Litigants should remember that, where the Court has instructed a party to submit a proposed order after hearing, or where it is appropriate for the Court to grant a motion or application by default, they should submit such orders promptly. Failure to submit an order will result in no order being entered, which means that the relief sought has not yet been granted. For purposes of these Practices & Procedures, "submit" means the uploading of an order in compliance with the Court's E-Order Submission Procedures, which are available here:

<http://www.canb.uscourts.gov/ecf/reference-desk>

or the submission of an order to chambers in hard copy where the submitting party does not have access to the Court's CM/ECF system.

Additional information on Judge Hammond's E-Order Submission Requirements is available here:

<http://www.canb.uscourts.gov/procedure/hammond/judge-hammonds-e-order-submission-requirements>

F. Expedited Matters

Any request that the Court consider a matter on shortened time must be presented in an Application for an Order Shortening Time. Such Applications must comply with B.L.R. 9006-1 and Rule 9006(c) and must include a copy of the motion and supporting memorandum of points and authorities (but without supporting declarations, exhibits, requests for judicial notice, etc.) that the Applicant wishes the Court to consider on shortened time. In addition, such Applications should include a proposed briefing schedule and a proposed hearing date and time. The Applicant must support the Application with a declaration detailing the efforts to meet and confer with all affected parties concerning an abbreviated schedule and expedited hearing date. Generally, the Court will not convene hearings on Applications for Orders Shortening Time.

G. Temporary Restraining Orders

Any request for injunctive relief must be raised in an adversary proceeding. (Rule 7001(7).) The Court will not consider any request for a TRO unless the requesting party has commenced an adversary proceeding. Any litigant requesting a TRO must also file and serve an Application for an Order Shortening Time in accordance with the procedures set forth in section F, above.

H. Continuances

1. Trials

Judge Hammond will continue trials only for good cause. An agreement of the parties to continue a trial does not necessarily constitute good cause and does not bind the Court. Any request for a continuance of a trial must comply with B.L.R. 9006-1.

2. Hearings in Contested Matters

Unopposed Continuances. If all parties to a contested matter agree to continue a hearing, they should – no later than 24 hours prior to the hearing – contact Judge Hammond's Courtroom Deputy, Millie McGowan, at (408) 278-7578 or millie_mcgowan@canb.uscourts.gov and inform the Court of the continued date and time. Parties unable to contact Ms. McGowan more than 24 hours prior to a hearing to advise of a continuance must appear at the hearing to so advise the Court. Judge Hammond expects continued hearing dates and times to conform to her Open Calendar Procedures, which can be viewed at:

<http://www.canb.uscourts.gov/procedure/hammond/judge-hammonds-open-calendar-procedure>

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If in connection with an unopposed continuance the parties wish to alter the schedule for filing of papers set forth in B.L.R. 9014-1(c), they may do so by agreement and without leave of Court so long as all papers are filed and served no fewer than 7 days before the continued hearing date.

A hearing to consider approval of a disclosure statement or confirmation of a chapter 11 plan may not be continued without leave of Court in accordance with B.L.R. 9006-1.

Opposed Continuances. A party requesting a continuance that is opposed must comply with B.L.R. 9006-1.

3. Status Conferences

Status conferences in cases or adversary proceedings will not be continued absent leave of Court. Any request to continue a status conference must comply with B.L.R. 9006-1.

I. Final Applications for Compensation in Chapter 7 Cases

All final applications for compensation shall be set for hearing. If such applications have been properly served and noticed for hearing and if no party has objected to allowance of the requested fees and expenses, then the Trustee and professionals whose fees and expenses are the subject of a pending application need not attend the hearing; provided however, that they are available by telephone at the scheduled time of the hearing. If a party appears to present oral opposition to any pending application, the Court will contact the Trustee, Trustee's counsel and any other professional whose fees and expenses are the subject of the oral opposition to facilitate their telephonic appearance at the hearing to address such opposition. Where a party files a written opposition to an application for compensation, the applicant shall appear at the hearing in person or by telephone.

J. Status Conferences in Chapter 11 Cases

Shortly after the commencement of any case filed under Chapter 11 of the Code, the Court will issue an order ("Chapter 11 Status Conference Order") scheduling an initial status conference and requiring the debtor-in-possession to prepare and file a Status Conference Statement no fewer than 7 days prior to the status conference.

Judge Hammond's Notice of Chapter 11 Status Conference can be reviewed at:

<http://www.canb.uscourts.gov/procedure/hammond/judge-hammonds-open-calendar-procedure>

The purposes of the Chapter 11 status conference are to: (1) review the financial, business or other problems that prompted the filing of a petition for relief; (2) understand the debtor's assets and liabilities; and (3) understand the debtor's strategy for exiting Chapter 11.

Counsel should expect that the Court will generally set deadlines at the Chapter 11 status conference, including deadlines for filing a plan.

At least 7 days prior to any subsequent status conference, the debtor-in-possession or any Chapter 11 trustee appointed in the case shall file an updated Status Conference Statement.

Judge Hammond expects strict compliance with the Code and Rules. In particular, failure to comply with the following requirements could lead to conversion of the case:

- Attendance at the meeting of creditors pursuant to Code section 341(a)
- Use of cash collateral. Code section 363(c)(2) prohibits the use of cash collateral unless the debtor has either the prior consent of each creditor having an interest in the cash collateral or an order from the Court
- Transactions outside the ordinary course of business. Code section 363(b)(1) requires notice and a hearing prior to engaging in any such transactions
- Postpetition taxes. The Court expects all postpetition taxes to be timely paid and all required tax returns timely filed
- Monthly Operating Reports. B.L.R. 2015-2 requires monthly operating reports and tax reports to be filed on the 21st day of each month
- Quarterly United States Trustee fees. 28 U.S.C. § 1930(a)(6) requires a quarterly fee to be paid to the United States Trustee. The amount of the fee will depend upon the amount of disbursements made by the debtor during each quarter
- Funds of the bankruptcy estate. B.L.R. 2015-1 requires all funds of the bankruptcy estate to be deposited and maintained in a debtor-in-possession bank account

K. Standard-Form Combined Plan and Disclosure Statement for Chapter 11 Debtors

Judge Hammond encourages the use of this district's Standard-Form Combined Plan and Disclosure Statement (the "Form Plan") in Chapter 11 cases for individual debtors. At the initial Chapter 11 Status Conference, debtors and/or their counsel should be prepared to discuss whether use of the Form Plan is appropriate in their case. The Form Plan can be viewed at:

<http://www.canb.uscourts.gov/forms/district>

L. Hearing for Approval of Disclosure Statement in Chapter 11 Cases

All disclosure statement hearings should be scheduled on the Court's regular law and motion

calendar. (See Section C for Calendaring Matters.) A court order is not necessary for scheduling a hearing on approval of a disclosure statement. Unless otherwise ordered by the Court, the requirements of B.L.R. 3017-1(a) shall apply to the approval of all disclosure statements.

Debtors who use the Form Plan may seek tentative approval of the disclosure statement on at least 14 days' notice to all parties that have appeared in the case and who have requested special notice (both ECF parties and non-ECF parties). Notice need not be served on all creditors. The Form Plan shall be filed before or at the same time that the notice of hearing is filed, and debtors shall file a certificate of service indicating the parties that were served (electronically and by regular mail) with the notice of hearing. The deadline for filing objections to tentative approval of the disclosure statement is 7 days prior to the hearing. The Initial Status Conference Order abrogates the notice requirements of B.L.R. 3017-1(a) for debtors that use the Form Plan.

M. Amended Chapter 11 Plans and/or Disclosure Statements

Where it becomes necessary for a proponent of a Chapter 11 plan and/or disclosure statement to file and serve an amended version of either document, the proponent shall file as a separate docket entry a blackline that indicates exactly what changes have been incorporated in the amended document.

N. Status Conferences in Adversary Proceedings

Concurrent with the issuance of the Summons in any adversary proceeding, the Court will issue an Order re Initial Disclosures and Discovery Conference ("Scheduling Conference Order") and will set a scheduling or status conference ("Initial Scheduling Conference") approximately 60 days following the commencement of the adversary proceeding. Judge Hammond expects compliance with the Court's Scheduling Conference Order and particularly, expects the parties to timely prepare, file and serve a Discovery Plan.

If the adversary proceeding is one in which a Discovery Plan is not required, or if the status conference is one subsequent to the Initial Scheduling Conference, Judge Hammond expects the parties, jointly or severally, to prepare, file and serve a short (no more than 5 pages) status conference statement detailing the status of the adversary proceeding, any issues outstanding from prior status conferences and the party's or parties' proposal for resolving such issues. The parties should file and serve their status conference statement(s) at least 7 days prior to the status conference.

O. Discovery Disputes

In the event a discovery dispute arises, the parties shall meet and confer in good faith to attempt to resolve the issues. (See B.L.R. 1001-2(a) and Civil L.R. 37-1(a) and (b).) Should the parties fail to resolve a discovery dispute, the parties should not file discovery motions. Rather, the party that propounded the disputed discovery should submit a letter brief of no more than five (5) pages to the Court via email to Judge Hammond's Courtroom Deputy,

Millie McGowan, at millie_mcgowan@canb.uscourts.gov with a cc: to the opposing party. After conferring with Judge Hammond, Ms. McGowan will advise the other parties of their deadline(s) to submit letter briefs in opposition to the initiating party's. Absent leave of Court, no party should submit a letter brief exceeding five (5) pages or include exhibits with letter briefs. Letter briefs in excess of five (5) pages or exhibits submitted without the Court's permission will not be considered.

Any party requesting sanctions in connection with a discovery dispute must do so in a noticed motion.

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